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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,864	09/15/2003	George York	ATEX 8663US	2137

1688 7590 04/10/2007
POLSTER, LIEDER, WOODRUFF & LUCCHESI
12412 POWERSCOURT DRIVE SUITE 200
ST. LOUIS, MO 63131-3615

EXAMINER

MILLER, CARL STUART

ART UNIT	PAPER NUMBER
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3747

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

8P

Office Action Summary

Application No.

10/662,864

Applicant(s)

YORK ET AL.

Examiner

Carl S. Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney view of Clemmons.

Clemmons applies as noted above and Kenney teaches a very similar pump casing including a controller circuit. The controller includes a processor, an analog to digital converter and a PWM circuit. Depending upon whether or not the converter is viewed as part of the controller, the input from the controller may be viewed as either analog or binary.

It would have been obvious to modify Kenney by using the details of the Clemmons housing to construct the pump because the two pumps were very similar in structure and the Kenney pump is even disclosed as a possible constant output pump.

Applicant's arguments filed 1/11/07 have been fully considered but they are not persuasive. In particular, the applicant is mistaken when he states that the Kinney pump does not produce variable outputs. The pump is primarily designed to operate in this manner even though it is possible to run the pump at a constant speed and pressure (see column 9, line 42 to column 10, line 3).

Kenney controller to drive the pump because these more specific details are simply not shown in Clemmons and the pump speed control is proportional to the fuel pressure

control in the two devices. With regard to the variable control of the fuel through the fuel inlet, the applicant's claims state that this control results from the variable outlet pressure and thus a similar result would be inherent in Kenney. Finally, the motivation to combine the teachings can be found in the above noted fact that the Kenney pump can be operated at either a constant speed or a variable speed, thus suggesting to one of ordinary skill in the art

Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemmons and Kenney as applied to claim 1 above, and further in view of Braun.

Braun teaches using the fuel inside a pump housing to cool a heat sink that is attached to control circuit elements for the fuel pump. The fuel enters the sink housing part via an orifice and the applicant's slot is an obvious mechanical equivalent.

It would have been obvious to allow the fuel in Clemmons to contact the heat sink (30) and transistor already present to better cool the transistor since using the pump fuel for this purpose in a fuel pump was very old in the art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's arguments filed 1/11/07 have been fully considered but they are not persuasive. In particular, the applicant is mistaken when he states that the Kinney pump does not produce variable outputs. The pump is primarily designed to operate in this manner even though it is possible to run the pump at a constant speed and pressure (see column 9, line 42 to column 10, line 3). With regard to the variable control of the

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fuel through the fuel inlet, the applicant's claims state that this control results from the variable outlet pressure and thus a similar result would be inherent in Kenney. Finally, the motivation to combine the teachings can be found in the above noted fact that the Kenney pump can be operated at either a constant speed or a variable speed, thus suggesting to one of ordinary skill in the art that the details of the Clemmons housing could easily be used in Kenney.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl S. Miller whose telephone number is 571-272-4849. The examiner can normally be reached on MTWTHF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin, can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Carl S. Miller
Primary Examiner